

Internal Revenue Service

Number: **201442004**

Release Date: 10/17/2014

Index Number: 1295.02-02

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B02

PLR-103984-14

Date:

July 11, 2014

TY:

Legend

Shareholder =

Partner =

FC =

State =

Country =

Date =

Year 1 =

Year 2 =

Year 3 =

Law Firm =

Accounting Firm A =

Accounting Firm B =

Accounting Firm C =

Former Director of Tax =

Current Director of Tax =

x =

y =

Dear :

This is in response to a letter dated January 14, 2014, submitted by Shareholder's authorized representatives that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code and Treas. Reg. §1.1295-3(f) with respect to Shareholder's investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Shareholder by its authorized representatives, and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for ruling, such material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

FACTS

Shareholder is a partnership organized under the laws of State. Shareholder's tax matters partner, Partner, owns a x% direct interest in Shareholder. Partner is a corporation organized under the laws of State. It is classified as an association taxable as a corporation for U.S. federal income tax purposes. Partner is a publicly traded company.

Shareholder invested in FC on Date and owns y% of FC. FC is organized under the laws of Country. It is classified as an association taxable as a corporation for U.S. federal income tax purposes. FC has been a PFIC with respect to Shareholder since Date.

Former Director of Tax, Partner's former director of tax from Year 1 through Year 2, provided all international tax advice with respect to the investment in FC. During Year 1 through Year 2, Former Director of Tax engaged Law Firm, Accounting Firm A, and Accounting Firm B in connection with return preparation for Partner and Shareholder. Former Director of Tax held himself out as a qualified tax professional, and Partner reasonably believed that Former Director of Tax was competent to render tax advice with respect to the ownership of shares of a foreign corporation. Former Director of Tax had access to all relevant facts and circumstances related to Shareholder's ownership of FC stock. Former Director of Tax did not advise Shareholder of the possibility of making a QEF election with respect to FC, and thus did not advise Shareholder of the

consequences of making, or failing to make, a QEF election. Law Firm, Accounting Firm A, and Accounting Firm B also did not advise Shareholder of the possibility of making a QEF election with respect to FC, and thus did not advise Shareholder of the consequences of making, or failing to make, a QEF election.

Partner hired Current Director of Tax, Partner's current director of tax, in Year 3. Current Director of Tax engaged Accounting Firm C to review its international tax matters. Accounting Firm C identified FC as being a PFIC of Shareholder from Date.

Shareholder submitted an affidavit, under penalties of perjury, which describes the events that led to its failure to make a QEF election with respect to FC by the election due date, including the roles of Law Firm, Accounting Firm A, Accounting Firm B, and Former Director of Tax.

Shareholder represents that, as of the date of this request for ruling, the PFIC status of FC has not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Shareholder requests the consent of the Commissioner to make a retroactive QEF election with respect to FC for its Year 1 tax year ("Tax Year 1") under Treas. Reg. §1.1295-3(f).

LAW

Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a shareholder if (1) an election by the shareholder under section 1295(b) applies to the PFIC for the taxable year; and (2) the PFIC complies with the requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gains of the company.

Under section 1295(b)(2), a QEF election may be made for a taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for the taxable year. To the extent provided in regulations, the election may be made after the due date if the shareholder failed to make an election by the due date because the shareholder reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a shareholder may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. §1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. §1.1295-3(f)(3);

3. the request is made before a representative of the IRS raises upon audit the PFIC status of the company for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. §1.1295-3(f)(4).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. §1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events that led to the failure to make a QEF election by the election due date;
2. the discovery of the failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on the professional.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

CONCLUSION

Based on the information submitted and representations made with Shareholder's ruling request, we conclude that Shareholder has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Shareholder to make a retroactive QEF election with respect to FC for Tax Year 1, provided that Shareholder complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This private letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Barbara E. Rasch
Senior Technical Reviewer, Branch 2
(International)

cc: